

HOUSE GOVERNMENT AND URBAN AFFAIRS COMMITTEE SUBSTITUTE FOR  
HOUSE BILL 291

**46TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2004**

AN ACT

RELATING TO INFORMATION TECHNOLOGY; ENACTING THE ELECTRONIC  
GOVERNMENT ACT; GRANTING DUTIES AND POWERS; MAKING AN  
APPROPRIATION; DECLARING AN EMERGENCY.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. SHORT TITLE.--This act may be cited as the  
"Electronic Government Act".

Section 2. PURPOSE.--The purpose of the Electronic  
Government Act is to:

A. establish an electronic government and  
management structure to provide oversight, review, fiscal  
monitoring, strategic planning and policy development for the  
state's electronic government initiatives;

B. define the electronic government powers and  
duties of the information technology commission;

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1 C. establish an electronic government lead agency  
2 and define its powers and duties;

3 D. establish a basis for the allocation of revenues  
4 generated by electronic government initiatives;

5 E. promote the digital provision of state  
6 information, services and business and financial transactions  
7 to constituents, businesses and other governmental entities;  
8 and

9 F. promote and protect the privacy of nonpublic  
10 data distributed through the state's portal as provided by law,  
11 and promote the security of the state's data records and  
12 electronic information and services.

13 Section 3. DEFINITIONS.--As used in the Electronic  
14 Government Act:

15 A. "commercial entity" means a private for-profit  
16 business enterprise; provided that nonprofit business  
17 enterprises and the media are not commercial entities for  
18 purposes of the act;

19 B. "commission" means the information technology  
20 commission;

21 C. "contract portal developers or operators" means  
22 companies that offer portal development, maintenance and  
23 ongoing operations under contract with the state;

24 D. "consumer" means a person or entity that is  
25 eligible under the Electronic Government Act to be charged a

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1 fee in exchange for the receipt of electronic information or  
2 services through the state portal or the state's electronic  
3 government activities;

4 E. "convenience fee" means a fee charged to a  
5 consumer to purchase a data record electronically when that  
6 purchase is optional and for the convenience of the consumer;

7 F. "data record" means an electronic record owned  
8 or held in custody by the state and generally stored in a  
9 digital database;

10 G. "electronic business" means the conduct of  
11 digital business transactions, usually nongovernmental, over  
12 the internet;

13 H. "external electronic transactions" means digital  
14 electronic government transactions between state agencies and  
15 entities that are not state agencies;

16 I. "internal electronic transactions" means digital  
17 electronic government transactions between two or more state  
18 agencies;

19 J. "internet" means the worldwide, digital networks  
20 external to the state's networks;

21 K. "intranet" means the state's internal digital  
22 networks that do not generally provide access to the public;

23 L. "lead agency" means the state agency designated  
24 by the governor to supervise and coordinate the day-to-day  
25 operations of the state's portal and electronic government

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1 initiatives;

2 M. "portal" means a virtual, digital, single port-  
3 of-entry to provide access to state information, services and  
4 business and financial transactions;

5 N. "portal fee" means a fee authorized by the  
6 commission that the state charges to a consumer to obtain  
7 certain data records electronically or to complete certain  
8 business transactions with the state through the portal;

9 O. "state agency" means any executive branch agency  
10 of state government;

11 P. "subscription fee" means a fee charged to a  
12 consumer for specific, recurring electronic government services  
13 and information provided electronically to the consumer at the  
14 consumer's request;

15 Q. "tier pricing" means a pricing structure for the  
16 sale of a commodity that sets different prices for consumers  
17 based on their membership in specific categories; and

18 R. "transaction fee" means a fee charged to a  
19 consumer upon the purchase of certain data records to help  
20 defray the costs of providing the record electronically; the  
21 fee is charged by and retained by the contract portal  
22 developers or operators.

23 Section 4. ELECTRONIC GOVERNMENT OVERSIGHT AND  
24 GOVERNANCE.--The commission shall provide oversight and  
25 governance for the electronic government operations of the

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1 state's portal and state agency electronic government  
 2 activities.

3 Section 5. COMMISSION--ELECTRONIC GOVERNMENT POWERS AND  
 4 DUTIES.--The commission shall:

5 A. adopt and promulgate rules necessary for the  
 6 administration of the Electronic Government Act, including  
 7 operational procedures for the commission;

8 B. adopt and promulgate rules for state agencies to  
 9 conduct business by electronic means over the internet or  
 10 intranet, including financial transactions;

11 C. adopt and promulgate rules governing external  
 12 electronic transactions;

13 D. adopt and promulgate rules governing internal  
 14 electronic transactions;

15 E. adopt and promulgate rules jointly with the  
 16 state commission of public records for determining which types  
 17 of public data records may be released over the internet;  
 18 provided that all rules shall comply with all other applicable  
 19 state and federal laws;

20 F. adopt and promulgate rules authorizing the  
 21 collection of fees, including portal, transaction, subscription  
 22 and convenience fees;

23 G. establish pricing structures for data records  
 24 provided through the portal, including tier pricing when  
 25 appropriate unless such fees are otherwise authorized in law;

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1           H. audit data records released to the public over  
2 the internet to ascertain compliance with state and federal  
3 privacy laws and rules, and report violations to the office of  
4 the attorney general;

5           I. adopt and promulgate rules necessary to protect  
6 the security of data records that may be released to the public  
7 over the internet, ensure compliance with state and federal  
8 security laws and rules and report violations to the office of  
9 the attorney general;

10          J. provide oversight and review of state agencies'  
11 electronic government activities, including the state's  
12 electronic government portal and any contract portal developers  
13 or operators that may be retained by the state;

14          K. perform a monthly financial review, as well as a  
15 review of the annual independent fiscal audit of the electronic  
16 government fund and of the revenue generated by the state's  
17 electronic government portal through any contract portal  
18 developers or operators that may be retained by the state, to  
19 ensure that the portal is generating appropriate revenues and  
20 that the contract portal developers or operators are fulfilling  
21 the terms of their contracts with the state;

22          L. provide oversight and direction to the lead  
23 agency regarding the management of any contract portal  
24 developers or operators retained by the state and, with the  
25 chief information officer, approve or reject the lead agency's

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1 and contract portal developers' or operators' plans or  
 2 implementations for the portal;

3 M. develop and update annually by September 1 an  
 4 electronic government strategic plan for the state that is in  
 5 conformance with the state's information technology strategic  
 6 plan;

7 N. provide regular oversight and review of state  
 8 agency electronic government initiatives that are not conducted  
 9 through the state's portal to ensure that such initiatives are  
 10 in compliance with the state's electronic government strategic  
 11 plan and the state's information technology strategic plan;

12 O. designate committees and subcommittees as  
 13 appropriate to assist in the conduct of commission business,  
 14 including an electronic government committee;

15 P. provide oversight and review of the lead  
 16 agency's performance as the portal operations and contract  
 17 manager for the state and deliver semiannual reports of the  
 18 findings to the information technology oversight committee, the  
 19 department of finance and administration and the legislative  
 20 finance committee;

21 Q. review monthly the financial situation and the  
 22 operational status of the state's electronic government portal  
 23 and other non-portal electronic government activities of state  
 24 agencies and deliver semiannual reports of the findings to the  
 25 information technology oversight committee, the department of

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1 finance and administration and the legislative finance  
2 committee;

3 R. submit proposed rules to the information  
4 technology oversight committee for review and comment prior to  
5 adoption; and

6 S. authorize the initial fee structure for the  
7 portal, and thereafter, review the fee structure semiannually;  
8 the commission may adjust the fee structure at the time of the  
9 semiannual review, subject to the terms of contract with  
10 contract portal developers or operators.

11 Section 6. ELECTRONIC GOVERNMENT LEAD AGENCY--POWERS AND  
12 DUTIES.--

13 A. The governor shall designate a state agency as  
14 the lead agency for state electronic government activities.

15 B. The lead agency shall:

16 (1) provide day-to-day operational supervision  
17 and control of the state's electronic government portal and any  
18 contract portal developers or operators that may be retained by  
19 the state;

20 (2) accept direction from the commission  
21 regarding the management of the portal and contracts with  
22 contract portal developers or operators;

23 (3) provide necessary staff to supervise and  
24 manage the state's relationship and contract with any contract  
25 portal developers or operators that may be retained by the

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1 state;

2 (4) review the annual independent fiscal  
3 audits of the state's electronic government portal and present  
4 the results to the commission;

5 (5) provide any required staffing to the  
6 commission;

7 (6) recommend procedures and rules to the  
8 commission for improved oversight of the state's electronic  
9 government initiatives;

10 (7) provide monthly reports to the commission  
11 detailing the financial situation and the operational status of  
12 the state's electronic government portal and other such  
13 information as may be requested by the commission;

14 (8) provide semiannual reports to the  
15 commission for transmittal to the department of finance and  
16 administration, the information technology oversight committee  
17 and the legislative finance committee detailing the financial  
18 situation and the operational status of the state's electronic  
19 government portal and other non-portal electronic government  
20 activities of state agencies; and

21 (9) perform any other function assigned by the  
22 commission.

23 C. The lead agency may:

24 (1) obtain information, copies of documents  
25 and records that are not confidential by law from any state

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1 agency as necessary to carry out the provisions of the  
2 Electronic Government Act;

3 (2) enter into contracts;

4 (3) perform reviews of state agency electronic  
5 government projects or electronic government management  
6 processes;

7 (4) pursuant to the Personnel Act, hire staff  
8 as necessary to carry out the provisions of the Electronic  
9 Government Act; and

10 (5) when requested, offer assistance or  
11 expertise on electronic government to the judiciary,  
12 legislature, institutions of higher education, counties,  
13 municipalities, public school districts and other political  
14 subdivisions of the state.

15 Section 7. ELECTRONIC GOVERNMENT FUNDS--FEES--SALE OR  
16 RESALE OF ELECTRONIC DATA RECORDS, INFORMATION AND SERVICES.--

17 A. Money collected from providing electronic data  
18 records, services or information through the state's portal  
19 shall be distributed to the general fund, unless otherwise  
20 provided by law.

21 B. Fees for providing electronic data records,  
22 services or information that are otherwise authorized in law  
23 shall not be affected by the Electronic Government Act, whether  
24 or not those fees are collected through the state's portal.

25 C. Transaction fees that are authorized by the

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1 commission for the sale of electronic data records, services or  
2 information through the state's portal and specified in the  
3 contract with contract portal developers or operators shall be  
4 retained according to contract terms by the contract portal  
5 developers or operators unless otherwise authorized in law.

6 D. There are several categories of consumers who  
7 may be charged fees for receipt of certain electronic data  
8 records, information or services through the state's portal:

9 (1) a person or entity that obtains electronic  
10 data records, information or services for which a portal,  
11 convenience, transaction or subscription fee has been  
12 authorized by statute or other law;

13 (2) commercial entities that obtain electronic  
14 data records from the motor vehicle division of the taxation  
15 and revenue department for use in business but do not resell  
16 the data records or reports derived from the data records; fees  
17 for this class of users shall be capped at no more than two  
18 dollars (\$2.00) per data record, including both a portal fee  
19 and a transaction fee, if applicable;

20 (3) commercial entities that obtain electronic  
21 data records from the motor vehicle division for use in  
22 business and that resell the data records or reports derived  
23 from the data records; fees for this class of users shall be  
24 capped at no more than five dollars (\$5.00) per data record,  
25 including a portal fee and any other fee;

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1 (4) commercial entities that obtain electronic  
2 data records, information or services from state agencies other  
3 than the motor vehicle division but do not resell the  
4 electronic data records, information or services; portal,  
5 transaction, convenience or subscription fees for this class of  
6 users shall be determined by the commission;

7 (5) media including print publications, radio  
8 or television stations, or news organizations may be charged  
9 portal and transaction fees to cover the reasonable cost of  
10 reproduction and delivery of the electronic data records,  
11 information or services requested by the entity and delivered  
12 by the portal;

13 (6) nonprofit entities may be charged portal  
14 and transaction fees to cover the reasonable cost of  
15 reproduction and delivery of the electronic data records,  
16 information or services requested by the entity and delivered  
17 by the portal; and

18 (7) a person or entity that obtains state  
19 electronic data records, information or services provided  
20 through the state's portal is permitted to sell or resell the  
21 electronic data records, information or services only under the  
22 terms of a legal and valid contract between the state and the  
23 purchasing entity.

24 Section 8. ENFORCEMENT.--The commission may adopt and  
25 promulgate reasonable rules to enforce the Electronic

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1 Government Act.

2 Section 9. ELECTRONIC GOVERNMENT PLANS AND PROJECTS.--

3 A. The commission on higher education, the judicial  
 4 branch of government, the legislative branch of government  
 5 municipalities and counties are encouraged to submit their  
 6 electronic government plans and projects to the commission, and  
 7 the lead agency, the legislative finance committee and the  
 8 information technology oversight committee for review and  
 9 comment by those entities.

10 B. The commission on higher education, the judicial  
 11 branch of government, the legislative branch of government and  
 12 municipalities and counties are encouraged to coordinate their  
 13 electronic government plans and projects with the executive  
 14 branch and each other whenever possible in order to leverage  
 15 resources and optimize services to constituents.

16 Section 10. SAVING CLAUSE.--To the extent that any  
 17 provision of this act conflicts with the provisions of the  
 18 Public Records Act or the State Rules Act, the provisions of  
 19 the Public Records Act or the State Rules Act shall prevail.

20 Section 11. APPROPRIATION.--Fifty thousand dollars  
 21 (\$50,000) is appropriated from the general fund to the  
 22 information technology commission for expenditure in fiscal  
 23 years 2004 and 2005 to cover portal start-up expenses,  
 24 including the development of a request for proposals that will  
 25 result in the selection of one or more contract portal

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1 developers or operators. Any unexpended or unencumbered  
2 balance remaining at the end of fiscal year 2005 shall revert  
3 to the general fund.

4 Section 12. EMERGENCY.--It is necessary for the public  
5 peace, health and safety that this act take effect immediately.